Abstract
Screening is the process by which an authority determines whether Environmental Impact Assessment (EIA) is required for a project. It is a critical process with common pitfalls which make it susceptible to challenge. This article seeks to highlight some of the key traps to be aware of and avoid. It should not be viewed as a short cut to reading the Regulations but should provide a helpful starting point.

Introduction
Schedule 1 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 sets out which proposals automatically trigger the need for EIA. Schedule 2 identifies the types of scheme for which EIA may be required. For the types of project listed in Schedule 2, a determining authority decides whether or not there is a need for EIA based on whether the proposals (a) meets or exceeds specific size thresholds or (b) is within a sensitive area. The resulting Screening Opinion is issued by the determining authority.

There are common faults which some parties seek to exploit to delay and frustrate. Furthermore, the Regulations as drafted can create certain scenarios which others may seek to use to their own advantage. The following are just some which are worthy of consideration.

1. 'Sign Off' by the appropriate Officer
The formal opinion of the authority must be reached within 21 days and sent to the applicant. The period can be extended in writing with the applicant. The issue of a Screening Opinion is a task often delegated to officers. It is important to ensure that the officer issuing the screening has sufficient authorisation to do so under a Council's own internal arrangements. Opinions can be challenged and found invalid if not.

2. Referring to the most up to date Regulations
Check that screening letters refer to the most up to date Regulations. Templates might not be updated or screening opinions not regularly issued resulting in references to out of date legislation. Opinions are still being issued with reference to the 1999 EIA Regulations. A 'minor' indiscretion perhaps but one that some might use to delay the process.

3. Give reasons
If an Environmental Statement is required, the reasons should be given, but there is no requirement to give reasons where no Environmental Statement is required.

4. Role of the Secretary of State
A Screening Opinion can be made by or sought from the Secretary of State, regardless of whether the Local Planning Authority has already issued an opinion. This introduces a level of uncertainty for the development industry particularly as the opinion can be issued at any time up to the point where the application is determined. There is, thankfully, no evidence that this has widely occurred since the 2011 Regulations were introduced.

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1 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 Part 2. 5. (5)
2 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 Part 4. (7) (a)
3 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 Part 2. 4. (8)
Planning applications that have secured a resolution to grant at Development Control Committee might be particularly vulnerable when time passes between the Committee and the actual issue of the Decision Notice. Many months can pass whilst a Section 106 Agreement is being negotiation and impacts can and do change over time.

5. Third Party ‘Appeals’
Any interested person can ask the Secretary of State to make a screening direction where they disagree with a determining authority’s opinion. It is in effect, a right of appeal against a decision by a Local Planning Authority. The outcome may be the same, but this can frustrate. There is nothing to stop multiple requests to the Secretary of State. One hopes common sense prevails. Circumstances would have to be shown to have changed to warrant a different screening conclusion, but the Regulations do not preclude this.

6. Reserved Matters and Conditions
Reserved matters applications and the discharge of conditions can be considered to fall under the remit of the EIA Regulations as a "subsequent application". The Regulations define a subsequent application as follows:

"‘subsequent application’ means an application for approval of a matter where the approval—
(a) is required by or under a condition to which a planning permission is subject; and
(b) must be obtained before all or part of the development permitted by the planning permission may be begun"

The need for a second or updated EIA is only likely to be required if new information becomes known or there has been a change in circumstance. However, considerable time may pass between the original outline consent and subsequent applications coming forward. As a result, EIA attached to the original consent may be considered to be out of date by the point that reserved matter applications or conditions are made. Large sites built out over many years are likely to be most vulnerable. It is advisable for those that submit subsequent applications to deal with this matter identifying any change of circumstance at the point of submission. The Local Planning Authority should treat such applications as EIA applications, screening where necessary, undertaking the appropriate consultation and advertising.

4 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 Part 3. 8. (2)


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